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OPEN MEETING ITEM

COMMISSIONERS
MIKE GLEASON - Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
KRISTIN K. MAYES
GARY PIERCE



ARIZONA CORPORATION COMMISSION

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DATE: APRIL 18, 2007

DOCKET NO: G-03703A-06-0694 and G-20471A-06-0694

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Dwight D. Nodes. The recommendation has been filed in the form of an Opinion and Order on:

**BLACK MOUNTAIN GAS COMPANY
AND SEMSTREAM ARIZONA PROPANE, LLC
(TRANSFER AND SALE)**

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

APRIL 27, 2007

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

MAY 8, 2007, and MAY 9, 2007

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Secretary's Office at (602) 542-3931.

BRIAN C. McNEIL
EXECUTIVE DIRECTOR

Arizona Corporation Commission
DOCKETED

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1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 MIKE GLEASON - Chairman
4 WILLIAM A. MUNDELL
5 JEFF HATCH-MILLER
6 KRISTIN K. MAYES
7 GARY PIERCE

8 IN THE MATTER OF THE JOINT APPLICATION
9 OF BLACK MOUNTAIN GAS COMPANY AND
10 SEMSTREAM ARIZONA PROPANE, L.L.C. FOR
APPROVAL OF THE TRANSFER OF THE
BLACK MOUNTAIN PAGE DIVISION AND
RELATED ASSETS TO SEMSTREAM ARIZONA
PROPANE, L.L.C.

DOCKET NO. G-03703A-06-0694
DOCKET NO. G-20471A-06-0694

DECISION NO. _____

OPINION AND ORDER

11 DATE OF HEARING: March 26, 2007
12 PLACE OF HEARING: Phoenix, Arizona
13 ADMINISTRATIVE LAW JUDGE: Teena Wolfe
14 APPEARANCES: Jeremy A. Lite, QUARLES & BRADY STREICH
15 LANG LLP, on behalf of Applicant SemStream Arizona
16 Propane, L.L.C.;
17 Keith A. Brown and Karen S. Haller, Southwest Gas
18 Corporation, on behalf of Applicant Black Mountain
19 Gas Company; and
20 Charles Hains, Staff Attorney, Legal Division, on behalf
21 of the Commission's Utilities Division Staff.

22 **BY THE COMMISSION:**

23 On October 30, 2006, Black Mountain Gas Company ("BMG") and SemStream Arizona
24 Propane, L.L.C. (SemStream") (collectively, "Applicants") jointly filed with the Arizona Corporation
25 Commission ("Commission") an application for approval of the transfer and sale of BMG's non-
26 excluded regulated assets and property utilized in BMG's Page Division to SemStream and to
27 transfer BMG'S Page Division Certificate of Convenience and Necessity ("CC&N") to SemStream.

28 On December 11, 2006, the Commission's Utilities Division Staff ("Staff") informed
Applicants that the application met the sufficiency requirements under the Commission's rules.

On January 22, 2007, a Procedural Order was issued setting a hearing on the application and

1 setting associated procedural deadlines, including publication of notice of the application and
2 hearing.

3 On February 8, 2007, SemStream filed direct testimony in support of the application.

4 On February 12, 2007, Southwest Gas Corporation, on behalf of BMG, filed Certification of
5 Publication and Mailing in accordance with the requirements of the January 22, 2007 Procedural
6 Order. No requests for intervention were filed.

7 On March 5, 2007, Staff filed a Staff Report on the application, recommending approval
8 subject to several conditions.

9 On March 16, 2007, SemStream and BMG filed a Joint Response to the Staff Report.

10 The hearing was held as scheduled on March 26, 2007, before a duly authorized
11 Administrative Law Judge of the Commission. No members of the public appeared. Applicants and
12 Staff appeared through counsel. SemStream and Staff presented evidence. The matter was then
13 taken under advisement pending the submission of a Recommended Opinion and Order to the
14 Commission.

15 * * * * *

16 Having considered the entire record herein and being fully advised in the premises, the
17 Commission finds, concludes, and orders that:

18 **FINDINGS OF FACT**

19 1. BMG is a wholly owned subsidiary of Southwest Gas Corporation (“Southwest Gas”).
20 The transfer of BMG’s Page Division CC&N and assets to Southwest Gas was approved by
21 Commission Decision No. 66101 (July 25, 2003). BMG’s regulated propane distribution systems are
22 located within the City of Page, Arizona, where it serves approximately 1,400 customers, and within
23 the nearby Greenhaven development, where BMG’s Page Division serves approximately 130
24 customers. BMG has approximately 49 miles of distribution pipeline located within the City of Page;
25 approximately 2,000 customer service lines in the City of Page; one 18,000-gallon above-ground
26 storage tank in the Greenhaven development; approximately 12 miles of distribution pipeline in the
27 Greenhaven development; and approximately 160 customer service lines in the Greenhaven
28 development.

1 2. SemStream is a Delaware limited liability company that has been authorized to
2 transact business in Arizona since August 7, 2006. SemStream is a wholly-owned subsidiary of
3 SemStream L.P., which is in turn a subsidiary of SemGroup L.P. of Tulsa, Oklahoma.

4 3. On September 20, 2006, BMG entered into an agreement with SemStream for the
5 purchase and sale of BMG's non-excluded regulated assets and property utilized in BMG's Page
6 Division to SemStream L.P., SemStream's parent. On October 26, 2006, SemStream L.P. assigned
7 its rights under the agreement to SemStream.

8 4. On October 30, 2006, BMG and SemStream jointly filed with the Commission an
9 application for approval of the transfer and sale of BMG's non-excluded regulated assets and
10 property utilized in BMG's Page Division to SemStream and to transfer BMG'S Page Division
11 CC&N to SemStream.

12 5. SemStream's witness testified that the assets of its parent company SemStream L.P.,
13 and the management and staff that support those assets, would be available to SemStream after the
14 close of the proposed transaction. SemStream L.P. is one of the largest private propane terminal
15 operators in the industry and is engaged nationally in natural gas liquids supply, marketing, propane
16 terminal operations and risk management services. SemStream L.P. owns and operates 10 private
17 propane terminals with a combined throughput in excess of 300 million gallons per year and owns
18 and leases in excess of 10 million gallons of physical storage. SemStream L.P. also has access to
19 over 42 million gallons of leased storage capacity at various locations in the United States and
20 Canada, and in 2005 transported 6.8 million gallons of natural gas liquids per day, 42 percent of
21 which was propane. SemStream's witness testified that BMG's Page Division customers can expect
22 to benefit from increased supply security as a result of SemStream's access to its parent's storage and
23 distribution resources.

24 6. SemStream's witness testified that it plans to maintain a local presence, including the
25 offices where BMG's Page Division employees work today. SemStream intends to retain all of
26 BMG's Page Division current five employees, and to hire new employees to fill two vacant positions,
27 such that it will retain all seven BMG Page Division employee positions.

28 7. We find that SemStream has access to the resources necessary to operate the BMG

1 Page Division system and to supply safe, adequate and reliable service to BMG's Page Division
2 customers, and that it will have access to adequate financial resources to operate BMG's propane
3 distribution system in Arizona.

4 8. The Staff Report recommended approval of the proposed sale and transfer subject to
5 the following conditions:

- 6 1) That SemStream retains the tariff, rates and charges approved by the Commission
7 for the Page Division in Decision No. 66101 (July 25, 2003), pending conclusion of
8 a future rate case.
- 9 2) That SemStream retains the Page Division's Purchased Gas Adjuster ("PGA")
10 surcharge of \$0.2562 per therm, as approved in Decision No. 68816 (June 29,
11 2006), pending any change by the Commission in a future PGA surcharge
12 proceeding.
- 13 3) That SemStream maintains a separate accounting record for its operation of the Page
14 Division and retains a copy of the related books and records in Arizona.
- 15 4) That SemStream and its parents make available to Staff their books and records,
16 upon request during a rate case or other proceedings.
- 17 5) That SemStream shall not seek regulatory recovery of any costs arising from this
18 transaction in a future rate proceeding;
- 19 6) That the Commission deny SemStream recovery of any acquisition adjustment
20 resulting from this transaction.
- 21 7) That if the Commission decides to defer consideration of regulatory recovery of
22 acquisition costs and acquisition adjustment in a future proceeding, that SemStream
23 be required to "demonstrate that clear, quantifiable and substantial net benefits to
24 ratepayers have resulted from the acquisition of the Page Division's systems that
25 would not have been realized had the transaction not occurred, before the
26 Commission would consider recovery of any acquisition adjustment in a future rate
27 proceeding."
- 28 8) That Southwest Gas assumes full responsibility for any gain or loss arising from the
sale of its Page Division and transfer of the related CC&N.
- 9) That SemStream assumes responsibility for the balance of the Page Division's
prepayments, customer deposits and the refundable portion of advances in aid of
construction ("AIAC"), at the close of the transaction.
- 10) That SemStream maintains an adequate level of staffing in Arizona, including
qualified technical personnel, sufficient to avoid degradation of service to its
customers.

- 1 11) That SemStream complies with all Commission rules, orders and other requirements
2 relevant to the provision of service in Arizona.
- 3 12) That SemStream timely files financial and other reports required by the Commission
4 in the proper format.
- 5 13) That SemStream Arizona adds an additional page to its monthly PGA report, listing
6 any propane purchases made during that month from any affiliate. Also, Staff
7 recommends that as part of SemStream's monthly PGA report, filed in April each
8 year, that it provide a summary of the previous calendar year's propane purchases
9 from any affiliate, as well as noting any other affiliate transactions related to its
10 acquisition of propane supplies.
- 11 14) That SemStream maintains all procedures and records needed to show compliance
12 with all pipeline safety regulations at the Page office.
- 13 15) That SemStream upgrades the existing manuals to more correctly reflect the Page
14 Division's operations, within 30 days after completion of the sale.
- 15 16) That BMG or Southwest Gas corrects all non-compliance items noted during the
16 2007 code compliance audit before completion of the sale.
- 17 17) That within 90 days of approval of the application, SemStream files a report in this
18 docket providing a detailed explanation of how propane supplies will be purchased
19 for the Page Division and how such purchases will be coordinated and allocated
20 between the Page and Payson service areas.

Staff Proposed Condition Nos. 1-4, 8-14, and 16-17

- 17 9. Applicants had no objection to Staff's proposed Condition Nos. 1-4, 8-14, and 16-17.

18 We find these conditions reasonable and will adopt them.

19 **Staff Proposed Condition No. 15**

20 10. SemStream requested that this condition be amended to allow it six months following
21 completion of the sale to upgrade existing manuals. Staff did not object to this request. The
22 condition with the modification requested by SemStream is reasonable and will be adopted.

23 **Staff Proposed Condition Nos. 5-7: Acquisition Adjustment**

24 11. The September 20, 2006 agreement between BMG and SemStream, L.P. provides for
25 a purchase price of \$1.8 million, to be adjusted by the Page Division's working capital at the close of
26 the transaction. As of December 31, 2006, the Page Division had a net book value of approximately
27 \$2.103 million. Staff states that based on the tentative figures, it appears that the sale of the Page
28

1 Division may result in a loss. Staff recommends, however, that as a condition of approval of the
2 application, Applicants' shareholders be held responsible for the net impact of the transaction, and
3 Arizona ratepayers be held harmless (Staff Report at 3).

4 12. Staff's proposed Condition No. 5 would preclude SemStream from seeking regulatory
5 recovery in a future rate proceeding of any costs that might arise from the proposed sale and transfer,
6 including recovery of any acquisition adjustment, as a condition of approval of the application, and
7 Staff's proposed Condition No. 6 would deny SemStream recovery of any acquisition adjustment
8 resulting from the proposed sale and transfer. Staff's witness testified that its proposed Condition
9 Nos. 5 and 6 would better protect ratepayers than its alternative proposed Condition No. 7.
10 Applicants object to Staff's proposed Condition Nos. 5 and 6, and request that the Commission
11 instead adopt Staff's proposed Condition No. 7. SemStream argues that a condition automatically
12 prohibiting future cost recovery would not be in the public interest if it might act to discourage
13 transactions that could produce net consumer benefits, or if it counteracts the incentive for regulated
14 companies to strive toward peak efficiency and denies an acquiring utility the opportunity to establish
15 and demonstrate operational and administrative efficiencies and consumer benefits in a future rate
16 proceeding. In support of its position, SemStream cites our determination in Decision No. 66101,
17 concerning the acquisition of BMG's Page Division by Southwest Gas. In Decision No. 66101, we
18 stated that the applicant would bear the burden in a future proceeding of proving clear and
19 quantifiable savings for all ratepayers directly related to the acquisition and the new owner's
20 management/operation of the system (Decision No. 66101 at 14).

21 13. We recognize that Staff's position in support of its proposed Condition Nos. 5 and 6 is
22 based on Staff's belief that it is in the public interest to protect ratepayers from bearing the costs of
23 the transaction absent a showing of actual and significant benefits to consumers. Staff's alternative
24 proposed Condition No. 7 would require SemStream to demonstrate that clear, quantifiable and
25 substantial net benefits to ratepayers have resulted from the acquisition of the Page Division's
26 systems that would not have been realized had the transaction not occurred, before the Commission
27 would consider recovery of any acquisition adjustment in a future rate proceeding. We believe the
28 public interest requires that all relevant information be available prior to making a final decision on

1 these issues, and therefore find Staff's alternative proposed Condition No. 7 to be more reasonable.
2 Our decision here does not mean that ratepayers should or will bear any portion of the costs
3 associated with this acquisition, only that when the relevant information becomes available,
4 SemStream should have an opportunity to show sufficient consumer benefits directly related to the
5 acquisition and to SemStream's management and operation of the Page Division system to justify
6 recovery of acquisition costs from ratepayers.

7 14. The Commission makes no finding at this time as to the reasonableness of
8 SemStream's future recovery of the costs of the transaction or an acquisition adjustment. SemStream
9 is cautioned, however, that Commission consideration of recovery of any acquisition adjustment in a
10 future rate proceeding will require a demonstration that clear, quantifiable, and substantial net
11 benefits to all ratepayers have resulted from SemStream's acquisition of the Page Division system,
12 and that such benefits would not have been realized had the transaction not occurred.

13 15. The following conditions on approval of the application are reasonable to protect the
14 public interest:

- 15 1) SemStream shall retain and charge the tariff, rates and charges approved by the
16 Commission for the Page Division in Decision No. 66101 (July 25, 2003), pending
17 conclusion of a future rate case.
- 18 2) SemStream shall retain the Page Division's PGA surcharge of \$0.2562 per therm, as
19 approved in Decision No. 68816 (June 29, 2006), pending any change by the
20 Commission in a future PGA surcharge proceeding.
- 21 3) SemStream shall maintain a separate accounting record for its operation of the Page
22 Division and shall retain a copy of the related books and records in Arizona.
- 23 4) SemStream and its parents shall make available to Staff their books and records,
24 upon request during rate case or other proceedings.
- 25 5) SemStream shall assume responsibility for the balance of the Page Division's
26 prepayments, customer deposits and the refundable portion of AIAC at the close of
27 the transaction.
- 28 6) SemStream shall maintain an adequate level of staffing in Arizona, including
qualified technical personnel, sufficient to avoid degradation of service to its
customers.

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- 7) SemStream shall comply with all Commission rules, orders and other requirements relevant to the provision of service in Arizona.
- 8) SemStream shall timely file financial and other reports required by the Commission in the proper format.
- 9) SemStream shall add an additional page to its monthly PGA report, listing any propane purchases made during that month from any affiliate. As part of SemStream's monthly PGA report, filed in April each year, SemStream shall provide a summary of the previous calendar year's propane purchases from any affiliate, as well as noting any other affiliate transactions related to its acquisition of propane supplies.
- 10) SemStream shall maintain all procedures and records needed to show compliance with all pipeline safety regulations at the Page office.
- 11) SemStream shall upgrade the existing manuals to more correctly reflect the Page Division's operations, within six months of the sale.
- 12) SemStream shall file in this docket, within 90 days of this Decision, a report providing a detailed explanation of how propane supplies will be purchased for the Page Division and how such purchases will be coordinated and allocated between SemStream's Page and Payson service areas.

16. It is reasonable, to protect the public interest, to require that BMG or Southwest Gas correct all non-compliance items noted during the 2007 code compliance audit before completion of the sale, as a condition of approval of the application.

17. It is reasonable, to protect the public interest, to require Southwest Gas to assume full responsibility for any gain or loss arising from the sale of its Page Division assets in Arizona as well as the transfer of the related CC&N, as a condition of approval of the application.

CONCLUSIONS OF LAW

1. BMG and Southwest Gas are public service corporations within the meaning of Article XV of the Arizona Constitution and A.R.S. §§ 40-282 and 40-285.

2. The Commission has jurisdiction over BMG, SemStream, and Southwest Gas, and of the subject matter of the application.

3. Notice of the application was given in accordance with the law.

4. There is a continuing need for underground propane gas utility service in BMG's Page Division certificated area.

1 during the 2007 code compliance audit before completion of the sale.

2 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

3 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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6 CHAIRMAN

COMMISSIONER

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8 COMMISSIONER

COMMISSIONER

COMMISSIONER

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IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this ____ day of _____, 2007.

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BRIAN C. McNEIL
EXECUTIVE DIRECTOR

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17 DISSENT _____

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19 DISSENT _____

TW:db

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1 SERVICE LIST FOR:

BLACK MOUNTAIN GAS COMPANY AND
SEMSTREAM ARIZONA PROPANE, L.L.C

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3 DOCKET NO.:

G-03703A-06-0694 et al.

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